

AMENDED IN SENATE MAY 11, 1999

AMENDED IN SENATE APRIL 26, 1999

SENATE BILL

No. 746

Introduced by Senators Schiff, Costa, and Rainey

February 24, 1999

An act to amend ~~Sections 727 and 6600~~ of *Section 6600 of, and to add Section 727.2 to, the Welfare and Institutions Code*, relating to sexual predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 746, as amended, Schiff. Sexually violent predators.

Existing law sets forth procedures under which a person under the jurisdiction of the Department of Corrections may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator. Existing law provides, under certain circumstances, that this person may be required to stand trial, be found beyond a reasonable doubt to be a sexually violent predator, and be committed for 2 years to the custody of the State Department of Mental Health for treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

Existing law defines sexually violent predator, for purposes of these provisions, to mean a person who has been convicted of a sexually violent offense against 2 or more victims for which he or she received a determinate sentence and who has

a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

This bill would provide that a prior conviction for which a person received a determinate sentence shall include a prior juvenile adjudication of a sexually violent offense if certain conditions exist.

Existing law authorizes the juvenile court to make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of a minor who has been adjudged a ward of the juvenile court for the violation of any law or ordinance or because the minor is beyond control, violates curfew, or persistently and habitually refuses to obey the reasonable and proper directives of his or her parents, guardian, or custodian.

This bill would entitle a minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense to specific treatment as a sexual offender. The bill would provide that the failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 727 of the Welfare and~~
2 ~~Institutions Code is amended to read:~~
3 ~~727. (a) When a minor is adjudged a ward of the~~
4 ~~court on the ground that he or she is a person described~~
5 ~~by Section 601 or 602 the court may make any and all~~
6 ~~reasonable orders for the care, supervision, custody,~~
7 ~~conduct, maintenance, and support of the minor,~~
8 ~~including medical treatment, subject to further order of~~
9 ~~the court. To facilitate coordination and cooperation~~
10 ~~among government agencies, the court may, after giving~~
11 ~~notice and an opportunity to be heard, join in the juvenile~~
12 ~~court proceedings any agency that the court determines~~
13 ~~has failed to meet a legal obligation to provide services to~~

~~the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.~~

~~Where any minor has been adjudged a ward of the court for the commission of a “sexually violent offense,” as defined in Section 6600, the ward shall be given sexual offender treatment consistent with protocols for that treatment developed or implemented by the Department of the Youth Authority.~~

~~The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court’s determination shall be limited to whether the agency has complied with that chapter.~~

~~In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2~~

~~(commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of justice would best be served and states reasons on the record for that determination.~~

~~In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:~~

~~(1) The home of a relative. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.~~

~~(2) A suitable licensed community care facility.~~

~~(3) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.~~

~~(b) Where the court has ordered a specific minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, provided that all the following certification conditions are met:~~

~~(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.~~

~~(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.~~

~~(3) The probation officer notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license~~

~~application documents prior to and after the placement of the minor. If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.~~

~~When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.~~

~~(e) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer.~~

~~When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.~~

SECTION 1. Section 727.2 is added to the Welfare and Institutions Code, to read:

727.2. Where any minor has been adjudged a ward of the court for the commission of a "sexually violent offense," as defined in Section 6600, and committed to the Department of the Youth Authority, the ward shall be given sexual offender treatment consistent with protocols for that treatment developed or implemented by the Department of the Youth Authority.

SEC. 2. Section 6600 of the Welfare and Institutions Code is amended to read:

1 6600. As used in this article, the following terms have
2 the following meanings:

3 (a) “Sexually violent predator” means a person who
4 has been convicted of a sexually violent offense against
5 two or more victims for which he or she received a
6 determinate sentence and who has a diagnosed mental
7 disorder that makes the person a danger to the health and
8 safety of others in that it is likely that he or she will engage
9 in sexually violent criminal behavior.

10 For purposes of this subdivision, a prior finding of not
11 guilty by reason of insanity for an offense described in
12 subdivision (b), a conviction prior to July 1, 1977, for an
13 offense described in subdivision (b), a conviction
14 resulting in a finding that the person was a mentally
15 disordered sex offender, or a conviction in another state
16 for an offense that includes all the elements of an offense
17 described in subdivision (b), shall also be deemed to be
18 a sexually violent offense even if the offender did not
19 receive a determinate sentence for that prior offense.

20 Conviction of one or more of the crimes enumerated in
21 this section shall constitute evidence that may support a
22 court or jury determination that a person is a sexually
23 violent predator, but shall not be the sole basis for the
24 determination. The existence of any prior convictions
25 may be shown with documentary evidence. The details
26 underlying the commission of an offense that led to a
27 prior conviction, including a predatory relationship with
28 the victim, may be shown by documentary evidence,
29 including, but not limited to, preliminary hearing
30 transcripts, trial transcripts, probation and sentencing
31 reports, and evaluations by the State Department of
32 Mental Health. Jurors shall be admonished that they may
33 not find a person a sexually violent predator based on
34 prior offenses absent relevant evidence of a currently
35 diagnosed mental disorder that makes the person a
36 danger to the health and safety of others in that it is likely
37 that he or she will engage in sexually violent criminal
38 behavior.

39 (b) “Sexually violent offense” means the following
40 acts when committed by force, violence, duress, menace,

1 or fear of immediate and unlawful bodily injury on the
2 victim or another person, and that are committed on,
3 before, or after the effective date of this article and result
4 in a conviction or a finding of not guilty by reason of
5 insanity, as provided in subdivision (a): a felony violation
6 of paragraph (2) of subdivision (a) of Section 261,
7 paragraph (1) of subdivision (a) of Section 262, Section
8 264.1, subdivision (a) or (b) of Section 288, or subdivision
9 (a) of Section 289 of the Penal Code, or sodomy or oral
10 copulation in violation of Section 286 or 288a of the Penal
11 Code.

12 (c) “Diagnosed mental disorder” includes a
13 congenital or acquired condition affecting the emotional
14 or volitional capacity that predisposes the person to the
15 commission of criminal sexual acts in a degree
16 constituting the person a menace to the health and safety
17 of others.

18 (d) “Danger to the health and safety of others” does
19 not require proof of a recent overt act while the offender
20 is in custody.

21 (e) “Predatory” means an act is directed toward a
22 stranger, a person of casual acquaintance with whom no
23 substantial relationship exists, or an individual with whom
24 a relationship has been established or promoted for the
25 primary purpose of victimization.

26 (f) “Recent overt act” means any criminal act that
27 manifests a likelihood that the actor may engage in
28 sexually violent predatory criminal behavior.

29 (g) Notwithstanding any other provision of law and for
30 purposes of this section, no more than one prior juvenile
31 adjudication of a sexually violent offense may constitute
32 a prior conviction for which the person received a
33 determinate term if all of the following applies:

34 (1) The juvenile was 16 years of age or older at the time
35 he or she committed the prior offense.

36 (2) The prior offense is a sexually violent offense as
37 specified in subdivision (b). *Notwithstanding Section*
38 *6600.1, only an offense described in subdivision (b) shall*
39 *constitute a sexually violent offense for purposes of this*
40 *subdivision.*

1 (3) The juvenile was adjudged a ward of the juvenile
2 court within the meaning of Section 602 because of the
3 person's commission of the offense giving rise to the
4 juvenile court adjudication.

5 (4) *The juvenile was committed to the Department of*
6 *the Youth Authority for the sexually violent offense.*

7 (h) A minor adjudged a ward of the court for
8 commission of an offense that is defined as a sexually
9 violent offense shall be entitled to specific treatment as
10 a sexual offender. The failure of a minor to receive that
11 treatment shall not constitute a defense or bar to a
12 determination that any person is a sexually violent
13 predator within the meaning of this article.

